(*c*) price publications including stock exchange and commodity market quotations;

(*d*) published accounts and financial statements relating to the business affairs of the associated enterprises;

(*e*) agreements and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the international transactions or the specified domestic transactions, as the case may be;

(*f*) letters, e-mails and other correspondence, documenting any terms negotiated between the assessee and the associated enterprise;

(*g*) documents generally issued in connection with various transactions under the accounting practices followed.

(6) The information and documents specified under sub-rules (1), (2), (3) and (4), should, as far as possible, be contemporaneous and shall exist on the specified date referred to in section 173(*d*).

(7) For the purposes of sub-rule (6), where a relevant transaction continues to have effect beyond one tax year, fresh documentation need not be maintained separately in respect of each tax year, unless there is any significant change in —

(*a*) the nature or terms of such transaction; or

(*b*) underlying assumptions; or

(*c*) any other factor affecting the transfer price,

and in case of such a change, fresh documentation shall be maintained, bringing out its impact on pricing under sub-rules (1), (2), (3) and (4).

(8) The information and documents specified in sub-rules (1) to (4) shall be kept and maintained for a period of nine years from the end of the relevant tax year.

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Report from an accountant to be furnished under section 172.

85. (1) The report from an accountant, as defined in section 515(3)(*b*), required to be furnished under section 172 by every person who has entered into an international transaction or a specified domestic transaction during a tax year, shall be in Form No. 48 and be verified in the manner indicated therein.

(2) The report referred to in sub-rule (1) shall be furnished at least one month prior to the due date of furnishing return of income as per section 263(1)(*c*).

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Definitions for safe harbour rules for international transactions.

86. For the purposes of this rule and rules 87 to 93, —

(*a*) "accountant"—

(*i*) means an accountant referred to in section 515(3)(*b*), who fulfils the following conditions: —

(*A*) if he is pursuing the profession of accountancy individually or is a valuer then—

(*I*) he has professional experience of not less than ten years; and

(*II*) his annual receipt in the year preceding the year in which cost certification is undertaken, from the exercise of profession, exceeds fifty lakh rupees;

(*B*) if he is a member or partner in any entity engaged in rendering accountancy or valuation services then, the annual receipt of the entity in the year preceding the year in which cost certification is undertaken exceeds three crore rupees;

(*ii*) includes any person recognised for undertaking cost certification by the government of the country, where the associated enterprise is registered or incorporated or any of its agencies, who fulfils the following conditions:—

(*A*) the condition referred to in clause (*a*)(*i*)(*A*) and (*B*); and

(*B*) if he is a member or partner in any entity engaged in rendering accountancy or valuation services then, the entity or its affiliates have presence in more than two countries;

(*b*) "contract research and development services wholly or partly relating to software development" means the following: —

(*i*) research and development producing new theorems and algorithms in the field of theoretical computer science; or

(*ii*) development of information technology at the level of operating systems, programming languages, data management, communications software and software development tools; or

(*iii*) development of internet technology; or

(*iv*) research into methods of designing, developing, deploying or maintaining software; or

(*v*) software development that produces advances in generic approaches for capturing, transmitting, storing, retrieving, manipulating or displaying information; or

(*vi*) experimental development aimed at filling technology knowledge gaps, as may be necessary to develop a software programme or system; or

(*vii*) research and development on software tools or technologies in specialised areas of computing (image processing, geographic data presentation, character recognition, artificial intelligence and such other areas); or

(*viii*) upgradation of existing products, where source code has been made available by the principal, except where the source code has been made available to carry out routine functions like debugging of the software;

(*c*) "core auto components" means—

(*i*) engine and engine parts, including piston and piston rings, engine valves and parts cooling systems and parts and power train components; or

(*ii*) transmission and steering parts, including gears, wheels, steering systems, axles and clutches; or

(*iii*) suspension and braking parts, including brake and brake assemblies, brake linings, shock absorbers and leaf springs; or

(*iv*) lithiumion batteries for use in electric or hybrid electric vehicles;

(*d*) "corporate guarantee" means explicit corporate guarantee extended by a company to its wholly owned subsidiary being a non-resident in respect of any short-term or long-term borrowing, but does not include letter of comfort, implicit corporate guarantee, performance guarantee or any other guarantee of similar nature;

(*e*) "data centre" means a dedicated secure space within a building or centralised location, where computing and networking equipment is concentrated for the purpose of collecting, storing, processing, distributing or allowing access to large amounts of data;

(*f*) "data centre services" means the services provided by a data centre through the use of physical infrastructure including land, buildings, mechanical electrical power equipment, cooling system, security and information technology infrastructure including servers, computers, storage systems, operating systems, security solutions, network and associated software platforms, networking and other equipment, human resource in India;

(*g*) "generic pharmaceutical drug" means a drug that is comparable to a drug already approved by the regulatory authority in dosage form, strength, route of administration, quality and performance characteristics and intended use;

(*h*) "information technology enabled services" means any of the following business process outsourcing services provided mainly with the assistance or use of information technology: —

(*i*) back office operations; or

(*ii*) call centres or contact centre services; or

(*iii*) data processing and data mining; or

(*iv*) insurance claim processing; or

(*v*) legal databases; or

(*vi*) creation and maintenance of medical transcription excluding medical advice; or

(*vii*) translation services; or

(*viii*) payroll; or

(*ix*) remote maintenance or recovery; or

(*x*) revenue accounting; or

(*xi*) support centres; or

(*xii*) website services; or

(*xiii*) data search integration and analysis; or

(*xiv*) remote education excluding education content development; or

(*xv*) clinical database management services excluding clinical trials,

but does not include any research and development services whether or not in the nature of contract research and development services;

(*i*) "intra-group loan" means loan advanced to an associated enterprise being a nonresident, where the loan —

(*i*) is not advanced by an enterprise, being a financial company including a bank or a financial institution or an enterprise engaged in lending or borrowing in the normal course of business; and

(*ii*) does not include credit line or any other loan facility which has no fixed term for repayment;

(*j*) "knowledge process outsourcing services" means any of the following business process outsourcing services provided mainly with the assistance or use of information technology requiring application of knowledge and advanced analytical and technical skills: —

(*i*) geographic information system; or
(*ii*) human resources services; or
(*iii*) engineering and design services; or
(*iv*) animation or content development and management; or
(*v*) business analytics; or
(*vi*) financial analytics; or
(*vii*) market research,
but does not include any research and development services, whether or not in the nature of contract research and development services;

(*k*) "low value-adding intra-group services" means services that are performed by one or more members of a multinational enterprise group on behalf of one or more other members of the same multinational enterprise group and which —
(*i*) are in the nature of support services;
(*ii*) are not part of the core business of the multinational enterprise group, that is, such services neither constitute the profit-earning activities nor contribute to the economically significant activities of the multinational enterprise group;
(*iii*) are not in the nature of shareholder services or duplicate services;
(*iv*) neither require the use of unique and valuable intangibles nor lead to the creation of unique and valuable intangibles;
(*v*) neither involve the assumption or control of significant risk by the service provider nor give rise to the creation of significant risk for the service provider; and
(*vi*) do not have reliable external comparable services that can be used for determining their arm's length price,
but does not include the following services:—
(*A*) research and development services;
(*B*) manufacturing and production services;
(*C*) information technology (software development) services;
(*D*) knowledge process out-sourcing services;
(*E*) business process outsourcing services;
(*F*) purchasing activities of raw materials or other materials that are used in the manufacturing or production process;
(*G*) sales, marketing and distribution activities;
(*H*) financial transactions;
(*I*) extraction, exploration, or processing of natural resources; and
(*J*) insurance and reinsurance;

(*l*) "non-core auto components" means auto components other than core auto components;

(*m*) "no tax or low tax country or territory" means a country or territory in which the maximum rate of income-tax is less than 15%;

(*n*) "operating expense" means —
(*i*) the costs incurred in the tax year by the assessee in relation to the international transaction during the course of its normal operations including costs relating to Employee Stock Option Plan or similar stock-based compensation provided for by the associated enterprises of the assessee to the employees of the assessee;
(*ii*) reimbursement to associated enterprises of expenses incurred by the associated enterprises on behalf of the assessee at cost;
(*iii*) amounts recovered from associated enterprises on account of expenses incurred by the assessee on behalf of those associated enterprises and which relate to normal operations of the assessee at cost; and
(*iv*) depreciation and amortisation expenses relating to the assets used by the assessee,
but does not include—
(*A*) interest expense;
(*B*) provision for unascertained liabilities;
(*C*) pre-operating expenses;
(*D*) loss arising on account of foreign currency fluctuations;
(*E*) extraordinary expenses;
(*F*) loss on transfer of assets or investments other than assets, on which depreciation is included in the operating expense;
(*G*) expense on account of income-tax; and
(*H*) other expenses not relating to normal operations of the assessee;

(*o*) "operating revenue" means the revenue earned by the assessee in the tax year in relation to the international transaction during the course of its normal operations including costs relating to Employee Stock Option Plan or similar stock-based compensation provided for by the associated enterprises of the assessee to the employees of the assessee, but does not include—
(*i*) interest income;
(*ii*) income arising on account of foreign currency fluctuations;
(*iii*) income on transfer of assets or investments other than assets, on which depreciation is included in the operating expense;
(*iv*) refunds relating to income-tax;
(*v*) provisions written back;
(*vi*) extraordinary incomes; and
(*vii*) other incomes not relating to normal operations of the assessee;

(*p*) "operating profit margin" in relation to operating expense means the ratio of operating profit, being the operating revenue in excess of operating expense, to the operating expense expressed in terms of percentage;

(*q*) "relevant tax year" means the tax year for which the option for safe harbour is validly exercised;

(*r*) "software development services" mean—
(*i*) business application software and information system development using known methods and existing software tools; or
(*ii*) ancillary or support services for existing systems; or
(*iii*) converting or translating computer languages; or
(*iv*) adding user functionality to application programmes; or
(*v*) debugging of systems; or

(*vi*) adaptation of existing software; or
(*vii*) preparation of user documentation;

but does not include any research and development services whether or not in the nature of contract research and development services.

Eligible assessee for safe harbour rules for international transactions.

87. (1) Subject to the provisions of sub-rules (2) and (3), the "eligible assessee" means a person who has exercised a valid option for application of safe harbour rules in accordance with rule 90, and—

(*a*) is engaged in providing information technology services consisting of any one or more of the following:—
  (*i*) software development services; or
  (*ii*) information technology enabled services; or
  (*iii*) knowledge process outsourcing services; or
  (*iv*) contract research and development services wholly or partly relating to software development,
  with insignificant risk, to a non-resident associated enterprise (hereinafter referred to as foreign principal); or

(*b*) has made any intra-group loan; or

(*c*) has provided a corporate guarantee; or

(*d*) is engaged in providing contract research and development services wholly or partly relating to generic pharmaceutical drugs, with insignificant risk, to a foreign principal; or

(*e*) is engaged in the manufacture and export of core or non-core auto components and where 90% or more of total turnover during the relevant tax year is in the nature of original equipment manufacturer sales; or

(*f*) is in receipt of low value-adding intra-group services from one or more members of its group; or

(*g*) has provided data centre services to a foreign company.

(2) For the purposes of identifying an eligible assessee, with insignificant risk, referred to in sub-rule (1)(*a*), the Director General of Income-tax (Systems) shall have regard to the following factors:—

(*a*) the foreign principal performs most of the economically significant functions involved, including the critical functions, such as,—
  (*i*) conceptualisation;
  (*ii*) design of the product; and
  (*iii*) providing the strategic direction and framework,
  either through its own employees or through its other associated enterprises, while the eligible assessee carries out the work assigned to it by the foreign principal;

(*b*) the capital and funds and other economically significant assets including the intangibles required, are provided by the foreign principal or its other associated enterprises, and the eligible assessee is only provided a remuneration for the work carried out by it;

(*c*) the eligible assessee works under the direct supervision of the foreign principal or its associated enterprise which not only has the capability to control or supervise but also actually controls or supervises research or product development or the activities carried out through its strategic decisions to perform core functions as well as by monitoring activities on a regular basis;

(*d*) the eligible assessee does not assume or has no economically significant realised risks, and if a contract shows that the foreign principal is obligated to control the risk but the conduct shows that the eligible assessee is doing so, the contractual terms shall not be the final determinant;

(*e*) the eligible assessee has no ownership right, legal or economic, on any intangible generated or on the outcome of any intangible generated or arising during the course of rendering of services or on the outcome of the research, which vests with the foreign principal as evident from the contract and the conduct of the parties.

(3) For the purpose of identifying an eligible assessee, with insignificant risk, referred to in sub-rule (1)(*d*), the Director General of Income-tax (Systems) or the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall have regard to the following factors:—

(*a*) the foreign principal performs most of the economically significant functions involved in research or product development cycle, including the critical functions such as;
  (*i*) conceptualisation;
  (*ii*) design of the product; and
  (*iii*) providing the strategic direction and framework,
  either through its own employees or through its other associated enterprises while the eligible assessee carries out the work assigned to it by the foreign principal;

(*b*) the foreign principal or its other associated enterprises provides,—
  (*i*) the funds or capital;
  (*ii*) other economically significant assets including intangibles required for research or product development; and
  (*iii*) a remuneration to the eligible assessee for the work carried out by it;

(*c*) the eligible assessee works under the direct supervision of the foreign principal or its other associated enterprise which has not only the capability to control or supervise but also actually controls or supervises research or product development, through its strategic decisions to perform core functions as well as by monitoring activities on a regular basis;

(*d*) the eligible assessee does not assume or has no economically significant realised risks, and if a contract shows that the foreign principal is obligated to control the risk but the conduct shows that the eligible assessee is doing so, the contractual terms shall not be the final determinant;

(*e*) the eligible assessee has no ownership right, legal or economic, on the outcome of the research which vests with the foreign principal and which is evident from the contract as well as the conduct of the parties.

Eligible international transactions for safe harbour.

88. An "eligible international transaction" means an international transaction between the eligible assessee and its associated enterprise, one of which is necessarily a non-resident, and which comprises of—

(*a*) provision of information technology services consisting of any one or more of the following:—
  (*i*) provision of software development services; or
  (*ii*) provision of information technology enabled services; or
  (*iii*) provision of knowledge process outsourcing services; or
  (*iv*) provision of contract research and development services wholly or partly relating to software development; or

(*b*) advance of intra-group loan; or

(*c*) provision of corporate guarantee, where the amount guaranteed, —
  (*i*) does not exceed one hundred crore rupees; or
  (*ii*) exceeds one hundred crore rupees, and the credit rating of the associated enterprise, done by an agency registered with the Securities and Exchange Board of India, is of the adequate to highest safety; or

(*d*) provision of contract research and development services, wholly or partly, relating to generic pharmaceutical drugs; or

(*e*) manufacture and export of core auto components; or

(*f*) manufacture and export of non-core auto components; or

(*g*) receipt of low value-adding intra-group services from one or more members of its group; or

(*h*) provision of the data centre services.

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Safe harbour for eligible international transactions.

89. (1) The transfer price de-clared by an eligible assessee in respect of an eligible international transaction for a tax year shall be accepted by the income-tax authorities, if—

(*a*) the option exercised by the said assessee is not held to be invalid under rule 90; and

(*b*) it is in accordance with the circumstances as specified in sub-rule (2).

(2) The circumstances referred to in sub-rule (1) in respect of the eligible international transaction specified in column B of the following Table shall be as specified in column C thereof:

TABLE

Sl. No.	*Eligible International Transaction*	*Circumstances*
A	*B*	*C*
1.	Provision of information technology services.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 15.5%, where the aggregate operating revenue of such transaction entered into during the tax year does not exceed a sum of two thousand crore rupees.
2.	Advancing of intra-group loans where the amount of loan is denominated in Indian Rupees (rupees).	The interest rate declared in relation to the eligible international transaction entered into during the tax year is not less than the oneyear marginal cost of funds lending rate of State Bank of India as on the 1st April of the relevant tax year plus— (*i*) 175 basis points, where the associated enterprise has credit rating between AAA to A or its equivalent; or (*ii*) 325 basis points, where the associated enterprise has credit rating of BBB–, BBB or BBB+ or its equivalent; or (*iii*) 475 basis points, where the associated enterprise has credit rating between BB to B or its equivalent; or (*iv*) 625 basis points, where the associated enterprise has credit rating between C to D or its equivalent; or (*v*) 425 basis points, where credit rating of the associated enterprise is not available and the amount of loan advanced to the associated enterprise including loans to all associated enterprises in Indian Rupees does not exceed a sum of one hundred crore rupees in the aggregate as on the 31st March of the relevant tax year.
3.	Advancing of intra-group loans where the amount of loan is denominated in foreign currency.	The interest rate declared in relation to the eligible international transaction entered into during the tax year is not less than the reference rate of the relevant foreign currency as on the 30th September of the relevant tax year plus — (*a*) if amount of loan advanced to the associated enterprise including loans to all associated enterprises does not exceed a sum equivalent to two hundred and fifty crore rupees (Indian rupees) in the aggregate as on 31st March of the relevant tax year, — (*i*) 150 basis points, where the associated enterprise has a credit rating of AAA, AA+, AA, AA-, A+, A, A- or equivalent; or (*ii*) 300 basis points, where the associated enterprise has credit rating of BBB+, BBB, BBB- or equivalent; or (*iii*) 400 basis points, where the associated enterprise has a credit rating of BB+, BB, BB-, B+, B, B-, C+, C, C-, D or equivalent or where the credit rating of the associated enterprise is not available; (*b*) if amount of loan advanced to the associated enterprise including loans to all associated enterprises exceeds a sum equivalent to two hundred and fifty crore rupees (Indian rupees) in the aggregate as on the 31st March of the relevant tax year, — (*i*) 150 basis points, where the associated enterprise has a credit rating of AAA, AA+, AA, AA-, A+, A, A- or equivalent; or (*ii*) 300 basis points, where the associated enterprise has credit rating of BBB+, BBB, BBB- or equivalent; or (*iii*) 450 basis points, where the associated enterprise has a credit rating of BB+, BB, BB-, B+, B, B- or equivalent; or (*iv*) 600 basis points, where the associated enterprise has credit rating of C+, C, C-, D or equivalent or where the credit rating of the associated enterprise is not available.
4.	Providing corporate guarantee.	The commission or fee declared in relation to the eligible international transaction entered into during the tax year is at the rate not less than 1% per annum on the amount guaranteed.
5.	Provision of contract research and development services, wholly or partly, relating to generic pharmaceutical drugs.	The operating profit margin declared by the eligible assessee from the eligible international transaction entered into during the tax year in relation to operating expense incurred is not less than 24%, where the aggregate operating revenue of such transaction does not exceed a sum of three hundred crore rupees.
6.	Manufacture and export of core auto components.	The operating profit margin declared by the eligible assessee from the eligible international transaction entered into during the tax year in relation to operating expense is not less than 12%.
7.	Manufacture and export of non-core auto components.	The operating profit margin declared by the eligible assessee from the eligible international transaction entered into during the tax year in relation to operating expense is not less than 8.5%.
8.	Receipt of low value-adding intra-group services.	The aggregate amount of the low value adding intra-group services during the tax year, including a markup not exceeding 5%, does not exceed a sum of ten crore rupees, and the method of cost pooling, the exclusion of shareholder costs and duplicate costs from the cost pool and the reasonableness of the allocation keys used for allocation of costs to the assessee by the overseas associated enterprise, is certified by an accountant.

9.	Provision of the data centre services.	The operating profit margin declared by the eligible assessee from the eligible international transaction entered into during the tax year in relation to operating expense is not less than 15%.

(3) For the purposes of this rule, —

(*a*) "reference rate" means, —

(*i*) for US dollar, 6-month Term Secured Overnight Financing Rate (SOFR), currently administered by Chicago Mercantile Exchange (CME), as increased by 45 basis points;

(*ii*) for Euro, 6-month Euro Inter Bank Offered Rate (EURIBOR), currently administered by European Money Markets Institute;

(*iii*) for UK Pound Sterling, 6-month Term Sterling Overnight Index Average (SONIA), currently administered by ICE Benchmark Administration or Refinitiv, as increased by 30 basis points;

(*iv*) for Japanese Yen, 6-month Tokyo Term Risk Free Rate (TORF), currently benchmarked by QUICK Benchmarks Inc, as increased by 10 basis points;

(*v*) for Australian dollar, 6-month Bank Bill Swap Rates (BBSW) currently administered by Australian Securities Exchange; and

(*vi*) for Singapore dollar, 6-month Compounded Singapore Overnight Rate Average (SORA), currently administered by Monetary Authority of Singapore, as increased by 45 basis points;

(*b*) "credit rating" means the credit rating assigned to the associated enterprise by a Securities and Exchange Board of India registered and Reserve Bank of India accredited credit rating agency, which is applicable for the relevant tax year, so however that—

(*i*) where the associated enterprise has only one credit rating, then such rating shall be taken as its credit rating; or

(*ii*) where the associated enterprise has a credit rating from more than one such credit rating agency, then the least of such ratings shall be taken as its credit rating.

(4) The provisions of sub-rules (1) and (2) shall apply for a block period of three tax years commencing from the tax year 2026-2027 and shall continue to apply for block periods subsequent to the aforesaid block period, unless modified.

(5) No comparability adjustment and allowance under section 165(3)(*a*)(*ii*) shall be made to the transfer price declared by the eligible assessee and accepted under sub-rules (1) and (2).

(6) The provisions of sections 171 and 172 in respect of an international transaction shall apply irrespective of the fact that the assessee exercises his option for safe harbour in respect of such transaction.

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Procedure relating to transactions other than provision of information technology services.

90. (1) For the purposes of exercise of the option for safe harbour,—

(*a*) the assessee shall furnish Form No. 49, complete in all respects, to the Assessing Of-ficer on or before the due date specified in section 263(1)(*c*) for furnishing the return of income for the relevant tax year; and

(*b*) the return of income for the said tax year is furnished by the assessee on or before the date of furnishing of Form No. 49.

(2) On receipt of Form No. 49, the Assessing Officer shall verify whether—

(*a*) the assessee exercising the option is an eligible assessee; and

(*b*) the transaction in respect of which the option is exercised is an eligible international transaction,

before the option for safe harbour by the assessee is treated to be validly exercised.

(3) Where the Assessing Officer doubts the valid exercise of the option for the safe harbour by an assessee, he shall make a refer-ence to the Transfer Pricing Officer for determination of the eligibil-ity of the assessee or the international transaction, or both, for the purposes of the safe harbour.

(4) For the purposes of sub-rule (3), the Transfer Pricing Officer may require the assessee, by notice in writing, to furnish such information or documents or other evidence as he may consider necessary, and the assessee shall furnish the same within the time specified in such notice.

(5) Where —

(*a*) the assessee does not furnish the information or documents or other evidence required by the Transfer Pricing Officer; or

(*b*) the Transfer Pricing Officer finds that the assessee is not an eligible assessee; or

(*c*) the Transfer Pricing Officer finds that the international transaction in respect of which the option referred to in sub-rule (1) has been exercised is not an eligible international transaction,

the Transfer Pricing Officer shall, by order in writing, declare the option exercised by the assessee under sub-rule (1) to be invalid, after giving a reasonable opportunity of being heard to the assessee, and cause a copy of the said order to be served on the assessee and the Assessing Officer.

(6) If the assessee objects to the order of the Transfer Pricing Officer under sub-rule (5) declaring the option to be invalid, he may file his objections with the Commissioner, to whom the Transfer Pricing Officer is subordinate, within fifteen days of receipt of the order of the Transfer Pricing Officer.

(7) On receipt of the objection referred to in sub-rule (6), the Commissioner shall after providing a reasonable opportunity of being heard to the assessee, pass appropriate orders in respect of the validity, or otherwise of the option exercised by the assessee and cause a copy of the said order to be served on the assessee and the Assessing Officer.

(8) In a case, where option exercised by the assessee has been held to be valid, the Assessing Officer shall proceed to verify whether the transfer price declared by the assessee in respect of the relevant eligible international transactions is in accordance with the circumstances specified in rule 89(2) and, if it is not in accordance with the said circumstances, the Assessing Officer shall adopt the operating profit margin or rate of interest or commission specified in the said rule.

(9) For the purposes of this rule,—

(*i*) no reference under sub-rule (3) shall be made by an Assessing Officer after expiry of a period of two months from the end of the month in which Form No. 49 is received by him;

(*ii*) no order under sub-rule (5) shall be passed by the Transfer Pricing Officer after expiry of a period of two months from the end of the month in which the reference from the Assessing Officer under sub-rule (3) is received by him; and

(*iii*) the order under sub-rule (7) shall be passed by the Commissioner within a period of two months from the end of the month in which the objection filed by the assessee under sub-rule (6) is received by him.

(10) If the Assessing Officer or the Transfer Pricing Officer or the Commissioner, as the case may be, does not make a reference or pass an order, within the time specified in sub-rule (9), then the option for safe harbour exercised by the assessee shall be treated as valid.

(11) Form No. 49 shall be furnished electronically either under digital signature or through electronic verification code and shall be verified by the person who is authorised to verify the return of income of the assessee under section 265.

(12) The Assessing Officer may make a reference under section 166 in respect of international transaction other than the eligible international transaction.

Procedure relating to transactions of provision of information technology services.

91. (1) Where option for safe harbour is exercised in respect of eligible international transaction being provision of information technology services, such option for safe harbour, once exercised validly, shall continue to remain in force for a period of five consecutive tax years.

(2) For the purposes of safe harbour in respect of eligible international transaction referred to in sub-rule (1), the threshold of two thousand crore rupees of the aggregate operating revenue shall be tested for the first of the five consecutive tax years.

(3) For exercising option for safe harbour, the assessee shall furnish Form No. 49, complete in all respects, to the Director General of Income-tax (Systems) for the first of the five consecutive tax years for which option for safe harbour is proposed to be exercised on or before the due date of furnishing of return of income, as specified in section 263(1)(*c*), for the aforesaid first tax year.

(4) After furnishing of Form No. 49, verification in respect of the following shall be done electronically:–

(*a*) the assessee exercising the option is an eligible assessee;

(*b*) the transaction in respect of which the option is exercised is an eligible international transaction; and

(*c*) the exercise of option is valid.

(5) After verification, the assessee shall be intimated within a period of two months from the end of the month in which the option for safe harbour is exercised, about the acceptance or the rejection of the option exercised, as the case may be.

(6) The option for exercise of safe harbour shall not be rejected unless the assessee is provided an opportunity to remove defects, if any, in the application filed.

(7) Where an option for safe harbour is rejected electronically, the assessee shall be provided reasons for the same.

(8) Where an option for safe harbour is accepted, the assessee shall furnish return of income in accordance with the safe harbour provisions for each of the five consecutive tax years on or before the due date specified in section 263(1)(*c*).

(9) The option shall not remain in force in respect of any tax year, if the assessee withdraws the option for safe harbour, by furnishing a declaration to that effect.

(10) The withdrawal of option referred to in sub-rule (9) shall not be made after the expiry of six months from the end of the first tax year.

(11) Where the assessee withdraws the option for safe harbour by furnishing a declaration referred to in sub-rule (9) the option shall not remain in force for tax year for which assessee has withdrawn the option and for subsequent tax years.

(12) Where an assessee withdraws the option for safe harbour, he shall not be eligible to again exercise the option for safe harbour upto the period of expiry of five consecutive tax years referred to in sub-rule (1).

(13) The assessee shall, in respect of each of the four consecutive tax years following the first tax year, furnish a statement on or before the due date of furnishing return of income of that tax year as specified in section 263(1)(*c*), providing details of eligible transactions, their quantum and profit margins.

(14) The Assessing Officer may make a reference under section 166 in respect of international transaction other than the eligible international transaction.

(15) Form No. 49 shall be furnished electronically either under digital signature or through electronic verification code.

(16) Form No. 49 shall be certified by the chief executive officer or chairman and managing director of the assessee and verified by the person who is authorised to verify the return of income of the assessee under section 265.

(17) The Director General of Income-tax (Systems) shall, with the approval of the Board, lay down the data structure, standards, format and procedure of furnishing and verification of such Forms, statements, order, declaration, including any modification, if required.

Safe harbour rules for international transactions not to apply in certain cases.

92. Nothing contained in rule 86, 87, 88, 89, 90 or 91 shall apply in respect of eligible international transactions entered into with an associated enterprise located in any country or territory notified under section 176, or in a no tax or low tax country or territory.

Mutual agreement procedure not to apply where Safe harbour for international transactions is accepted.

93. Where transfer price in relation to an eligible international transaction, declared by an eligible assessee, is accepted by the income-tax authorities under section 167, the assessee shall not be entitled to invoke mutual agreement procedure under an agreement for avoidance of double taxation entered into with a country or specified territory outside India, as referred to under section 159.

Definitions for safe harbour rules for specified domestic transaction.

94. For the purposes of this rule and rules 95 to 98, —

(*a*) "Appropriate Commission" shall have the same meaning as assigned to it in section 2(*4*) of the Electricity Act, 2003 (36 of 2003); and

(*b*) "Government company" shall have the same meaning as assigned to it in section 2(*45*) of the Companies Act, 2013 (18 of 2013).

Eligible assessee for safe harbour rules for specified domestic transactions.

95. An "eligible assessee" means a person who has exercised a valid option for application of safe harbour rules in accordance with the provisions of rule 97, and —

(*a*) is a Government company engaged in the business of generation, supply, transmission or distribution of electricity; or

(*b*) is a co-operative society engaged in the business of procuring and marketing milk and* milk products.

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Eligible specified domestic transaction for safe harbour.

96. An "eligible specified domestic transaction" means a specified domestic transaction undertaken by an eligible assessee and which comprises of: —

(*a*) supply of electricity; or

(*b*) transmission of electricity; or

(*c*) wheeling of electricity; or

(*d*) purchase of milk or milk products by a co-operative society from its members.

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Safe harbour for eligible specified domestic transaction.

97. (1) The transfer price declared by an eligible assessee in respect of an eligible specified domestic transaction for a tax year shall be accepted by the income-tax authorities, if,—

(*a*) the option exercised by the said assessee is treated to be validly exercised under rule 98; and

(*b*) it is in accordance with the circumstances as specified in sub-rule (2).

(2) The circumstances referred to in sub-rule (1) in respect of the eligible specified domestic transaction specified in column B of the following Table shall be as specified in column C thereof:

TABLE

Sl. No.	*Eligible specified domestic Transaction*	*Circumstances*
A	*B*	*C*
1.	Supply of electricity, transmission of electricity, wheeling of electricity, as the case may be.	The tariff in respect of supply of electricity, transmission of electricity, wheeling of electricity, as the case may be, is determined or the methodology for determination of the tariff is approved by the Appropriate Commission in accordance with the provisions of the Electricity Act, 2003 (36 of 2003).
2.	Purchase of milk or milk products.	The price of milk or milk products is determined at a rate which is fixed on the basis of the quality of milk, namely, fat content and Solid Not Fat (SNF) content of milk and— (*a*) the said rate is irrespective of— (*i*) the quantity of milk procured; or (*ii*) the percentage of shares held by the members in the co-operative society; or (*iii*) the voting power held by the members in the society; and (*b*) such rates are routinely declared by the co-operative society in a transparent manner and are available in public domain.

(3) No comparability adjustment and allowance under section 165(3)(*a*)(*ii*) shall be made to the transfer price declared by the eligible assessee and accepted under sub-rule (1).

(4) The provisions of sections 171 and 172 in respect of a specified domestic transaction shall apply irrespective of the fact that the assessee exercises his option for safe harbour in respect of such transaction.

Procedure governing safe harbour rules for specified domestic transactions.

98. (1) For the purposes of exercising of the option for safe harbour, —

(*a*) the assessee shall furnish Form No. 49, complete in all respects, to the Assessing Officer on or before the due date specified in section 263(1)(*c*) for furnishing the return of income for the relevant tax year; and

(*b*) the return of income for the relevant tax year is to be furnished by the assessee on or before the date of furnishing of Form No. 49.

(2) On receipt of Form No. 49, the Assessing Officer shall verify whether—

(*a*) the assessee exercising the option is an eligible assessee; and

(*b*) the transaction in respect of which the option is exercised is an eligible specified domestic transaction,

before the option for safe harbour by the assessee is treated to be validly exercised.

(3) Where the Assessing Officer doubts the valid exercise of the option for the safe harbour by an assessee, he may require the assessee, by notice in writing, to furnish such information or documents or other evidence as he may consider necessary, and the assessee shall furnish the same within the time specified in such notice.

(4) Where—

(*a*) the assessee does not furnish the information or documents or other evidence required by the Assessing Officer; or

(*b*) the Assessing Officer finds that the assessee is not an eligible assessee; or

(*c*) the Assessing Officer finds that the specified domestic transaction in respect of which the option referred to under sub-rule (1) has been exercised is not an eligible specified domestic transaction; or

(*d*) the tariff is not in accordance with the circumstances specified under rule 97,

the Assessing Officer shall, by order in writing, declare the option exercised by the assessee under sub-rule (1) to be invalid, after giving a reasonable opportunity of being heard to the assessee, and cause a copy of the said order to be served on the assessee.

(5) If the assessee objects to the order of the Assessing Officer under sub-rule (4) declaring the option to be invalid, he may file his objections with the Principal Commissioner or the Commissioner, as the case may be, to whom the Assessing Officer is subordinate, within fifteen days of receipt of the order of the Assessing Officer.

(6) On receipt of the objection referred to in sub-rule (5), the Principal Commissioner or the Commissioner, as the case may be, shall after providing a reasonable opportunity of being heard to the assessee, pass appropriate orders in respect of the validity or otherwise of the option exercised by the assessee and cause a copy of the said order to be served on the assessee and the Assessing Officer.

(7) For the purposes of this rule, —

(*a*) no order under sub-rule (4) shall be made by an Assessing Officer after expiry of a period of three months from the end of the month in which Form No. 49 is received by him; and

(*b*) the order under sub-rule (6) shall be passed by the Principal Commissioner or Commissioner, as the case may be, within a period of two months from the end of the month in which the objection filed by the assessee under sub-rule (5) is received by him.

(8) If the Assessing Officer or the Principal Commissioner or the Commissioner, as the case may be, does not pass an order within the time specified under sub-rule (7), then the option for safe harbour exercised by the assessee shall be treated as valid.

(9) Form No. 49 shall be furnished electronically either under digital signature or through electronic verification code and shall be verified by the person who is authorised to verify the return of income of the assessee under section 265.

(10) The Assessing Officer may make a reference under section 166 in respect of specified domestic transaction other than the eligible specified domestic transaction.

Definitions for safe harbour rules for income attribution in case of income from business and profession.

99. For the purposes of this rule and rules 100 to 102, —

(*a*) "contract manufacturer" means an Indian company who produces specified electronic goods on behalf of any foreign company in a custom bonded area;

(*b*) "custom bonded area" means a warehouse as referred to in section 65 of the Customs Act, 1962;

(*c*) "eligible assessee" means—

- (*i*) a foreign company engaged in the business of diamond mining which has exercised an option for application of safe harbour rules in accordance with rule 100; or
- (*ii*) a foreign company which stores components in a warehouse in a custom bonded area for providing them to a contract manufacturer to be used for manufacturing of specified electronic goods;

(*d*) "eligible business" means—

- (*i*) a business of selling raw diamonds in any notified special zone as referred under section 9(9)(*c*)(*ii*)(*C*); or
- (*ii*) the business activity of storage of components in a warehouse in a custom bonded area for sale to a contract manufacturer to be used for manufacturing of specified electronic goods;

(*e*) "gross receipts" means, —

- (*i*) in a case referred to clause (*d*)(*i*), the aggregate of —
  - (*A*) the amount paid or payable to the eligible assessee or to any person on his behalf on account of sale of raw diamonds by such eligible assessee; and
  - (*B*) the amount received or deemed to be received by the eligible assessee or by any person on his behalf on account of sale of raw diamonds by such eligible assessee;
- (*ii*) in a case referred to clause (*d*)(*ii*), the aggregate of —
  - (*A*) the amount paid or payable to the eligible assessee or to any person on his behalf on account of sale of components in a warehouse in a custom bonded area to the contract manufacturer to be used for manufacturing of specified electronic goods; and
  - (*B*) the amount received or deemed to be received by the eligible assessee or by any person on his behalf on account of sale of components in a warehouse in a custom bonded area to the contract manufacturer to be used for manufacturing of specified electronic goods;

(*f*) "raw diamonds" means diamonds that are —

- (*i*) uncut or unpolished;
- (*ii*) unassorted;
- (*iii*) unworked or simply sawn, cleaved or bruted;
- (*iv*) not conflict diamonds as defined by the Kimberley Process;
- (*v*) accompanied by Kimberley Process Certificate issued by the Kimberley Process authority in the exporting country; and
- (*vi*) falling under Tariff Heading 7102 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);

(*g*) "relevant tax year" means the tax year in which the option for safe harbour is exercised;

(*h*) "specified electronic goods" shall mean—

- (*i*) mobile phones; or
- (*ii*) laptops, all-in-one personal computers and tablets; or
- (*iii*) servers and ultra small form factor (USSF); or
- (*iv*) sub-assemblies to the finished goods mentioned in clauses (*i*) to (*iii*); or
- (*v*) hearables and wearables and accessories related to the finished goods mentioned in clauses (*i*) to (*iii*).

Safe harbour for income attribution in case of income from business and profession.

100. (1) The income-tax authorities shall accept the option for safe harbour exercised by an eligible assessee in any relevant tax year under rule 101, where the income declared by such assessee from an eligible business is in accordance with the circumstances as specified under sub-rule (2), unless such safe harbour is declared invalid under the provisions of rule 101(3).

(2) In respect of the eligible business mentioned in column B of the following Table, the circumstances referred to in sub-rule (1) shall be as specified in column C thereof:

TABLE

Sl. No.	*Eligible business*	*Circumstances*
A	*B*	*C*
1.	Selling of raw diamonds.	The profits and gains of the eligible business chargeable to tax under the head "Profits and gains of business or profession" shall be 4% or more of the gross receipts from such business.
2.	The business activity of storage of components in a warehouse in a custom bonded area for sale to a contract manufacturer.	The profits and gains of the eligible business chargeable to tax under the head "Profits and gains of business or profession" shall be 2% or more of the gross receipts from such business.

(3) Where the eligible assessee has exercised the option for safe harbour under rule 101 in respect of the eligible business in any relevant tax year and such option is not declared invalid under the said rule,—

(*a*) any deduction allowable under the provisions of sections 28 to 34, 44 to 49, 51, 52, Schedule IX and Schedule X shall be deemed to have been already given full effect to and no further deduction under those sections or Schedules shall be allowed;

(*b*) the written down value of any asset of such business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for such tax year;

(*c*) no set off of unabsorbed depreciation under section 33(11) or carried forward loss under section 112(1) shall be allowed to such assessee; and

(*d*) no set off of loss from other business under section 108(1) or other head under section 109 shall be allowed to such assessee for income chargeable to tax under the head "Profits and gains of business or profession" in respect of such business.

(4) The provisions of sections 171 and 172 shall apply in respect of an international transaction or specified domestic transaction, if the eligible assessee enters into such transaction while carrying on the eligible business.

(5) For the purposes of this rule, the expressions, "international transaction" and "specified domestic transaction" shall have the meanings respectively assigned to them in sections 163 and 164.